

**FILE**

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 15 2004

OFFICE OF  
MANAGING DIRECTOR

DOCKET FILE COPY ORIGINAL

Gary M. Epstein, Esq.  
James H. Barker, Esq.  
Alex D. Hoehn-Saric, Esq.  
Latham & Watkins LLP  
555 11<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, DC 20004

RE: DIRECTV Enterprises, LLC  
Petition for Waiver of Application Fees or Fee  
Determination Request  
Fee Control Number 0401218160117001

Dear Counsel:

This is in response to your petition for waiver of application fees dated January 12, 2004 that you submitted on behalf of DIRECTV Enterprises, LLC (DIRECTV) in connection with a blanket earth station license application to cover downlink direct broadcast satellite (DBS) service to mass-market small-dish receive-only earth station antennas.<sup>1</sup> You request that the Commission find that no fee is required for the one million receive-only earth station antennas, i.e., waive these fees, or find "that the VSAT [i.e., Very Small Aperture Terminal] application fee [i.e., \$7,935.00] is appropriate as the closest analog to this request for a blanket DBS earth station application." Our records reflect that DIRECTV paid a \$7,935.00 filing fee with its blanket DBS earth station license application.

You state that DIRECTV requests authorization for one million technically identical receive-only earth station antennas "to expand its DBS service to consumers in the United States." You state that "[t]hese small receive-only satellite dishes generally require no separate filing fee to license or deploy because DBS is a mass-market consumer service for which the Commission has no licensing requirement." You state that "because the instant application seeks access to the United States from a Canadian orbital position, the Commission may require that the downlink receive-only antennas be subject to blanket licensing as a matter of public policy." You state that if this is the case, a literal reading of the Commission's "Fee Filing Guide" would require a fee of \$325.00 for each receive-only earth station for a total filing fee of \$325,000,000.00. You state that such a fee would pose a prohibitive economic burden on DIRECTV's ability to

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<sup>1</sup> See Public Notice, *Satellite Communications Services, Re: Satellite Radio Applications Accepted for Filing*, Report No. SES-00590 (Mar. 25, 2004) (DIRECTV's blanket receive-only earth station application (FCC File Number SES-LFS-20040112-00023) found acceptable for filing).

expand its local-into-local service and is inconsistent with the Commission's treatment of identical receive-only antennas in the U.S. DBS service.

You state that the Commission has determined that there is no need for a satellite operator to seek separate authorization for routinely-licensed receive-only earth station antennas or to pay a separate fee if the Commission has concluded that the public interest is served by that provider's being added to the Permitted Space Station List, including providers authorized to provide direct-to-home (DTH) services.<sup>2</sup> You state that although "this regime applies only to Fixed-Service Satellites and does not apply to DBS service, the underlying policy supports the same outcome in this instance." You state that as with a Permitted Space Station request, DIRECTV has submitted for the Commission's consideration the requisite analysis necessary for the Commission to determine whether it is in the public interest for DIRECTV to provide service to the United States from a Canadian orbital position. You state that if the Commission concludes that this is so, there is no reason for DIRECTV "to pay prohibitive fees to cover separate licensing for its customers' small-dish antennas" and to do so would "be overtly discriminatory treatment relative to other DBS and DTH providers serving the United States."

The Commission has discretion to waive filing fees "in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2). We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

The Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of "technically identical small antenna earth station facilities."<sup>3</sup> Based on the circumstances of this application, we find that DIRECTV's plan comports with the Commission's expressed intent in the *DISCO II* decision.<sup>4</sup> As in that situation,

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<sup>2</sup> *Citing Amendment of the Commission's Space Station Licensing Rules and Policies, Second Report and Order, 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, Second Report and Order, 18 FCC Rcd 12507 (2003).*

<sup>3</sup> *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order, 2 FCC Rcd 947, ¶¶ 245-248 (1987).*

<sup>4</sup> *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order, 12 FCC Rcd 24094, ¶¶ 201-204 (1997) (DISCO II) (e.g., "To impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request 'blanket' licenses for large numbers of technically identical receive-only antennas, such as home 'dishes.' Blanket*

Commission staff will expend fewer resources and will be able to more efficiently process DIRECTV's application because the multiple earth stations are technically identical. Consequently, we find that you have shown that the public interest is served in permitting a blanket application and waiving the fees that would have been required to accompany one million separate license requests.<sup>5</sup>

Your request is granted to the extent stated herein and the Commission accepts your check of \$7,935.00. If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger  
Chief Financial Officer

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applications may be filed by the space station operator, the service supplier, the equipment manufacturer, or the electronics retailer. Further in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.").

<sup>5</sup> See Letter from Mark Reger, Chief Financial Officer (CFO), Office of Managing Director (OMD), FCC, to Stephen R. Bell, Esq. and Jennifer D. McCarthy, Esq. (dated Sept. 13, 2001) (finding that the public interest is served in permitting OrionNet, Inc. a blanket application for 3,000 receive-only earth stations and waiving the application fees that would have been required to accompany 3,000 separate license requests and accepting the submitted application fee); see also Letter from Mark Reger, CFO, OMD, FCC, to Patricia J. Paoletta, Esq., Todd M. Stansbury, Esq., and Jennifer D. Hindin, Esq. (dated June 24, 2002) (finding that the public interest is served in waiving the fees for Digital Broadcasting Applications, Corp. that would have been required in connection with a consolidated application for authority to operate one million transmit and receive earth stations with FSS and DBS satellites for an integrated two-way broadband video data service, and finding that individual application fees for each component are appropriate, i.e., a fee amount equivalent to a VSAT initial application (per system), as well as fee amounts for a fixed satellite transmits/receive earth station application, and a lead application for a fixed satellite transmits/receive earth station. DBAC proposed to offer service using Ku-band capacity on an ALSAT FSS satellite and DBS capacity on Canadian licensed satellites).

RECEIVED - FCC

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JAN 13 2004

Federal Communication Commission  
Bureau / Office

In the Matter of )  
 )  
DIRECTV Enterprises, LLC )  
 )  
Petition for Waiver of Application Fees )

ORIGINAL

Attention: Andrew S. Fishel, Managing Director, Office of the Managing Director

**PETITION FOR WAIVER OF APPLICATION FEES OR, IN  
THE ALTERNATIVE, FEE DETERMINATION REQUEST**

DIRECTV Enterprises, LLC ("DIRECTV") respectfully requests that, pursuant to Sections 1.3 and 1.1117 of the Commission's Rules,<sup>1</sup> and the Communications Act of 1934 (the "Act"), as amended,<sup>2</sup> the Commission waive any filing fee requirement associated with the attached blanket earth station license application to cover downlink direct broadcast satellite ("DBS") service to mass-market small-dish receive-only earth station antennas. Although it is not clear that any fee filing is required under the Commission's rules, DIRECTV is filing this waiver request. If the Commission determines that a fee is required, DIRECTV requests the Commission find that the VSAT application fee is appropriate as the closest analog to this request for a blanket DBS earth station application.<sup>3</sup>

Specifically, DIRECTV is requesting authorization for 1,000,000 technically identical receive-only earth station antennas in order to expand its DBS service to consumers in the United

<sup>1</sup> 47 C.F.R. § 1.3 and 1.1117.

<sup>2</sup> 47 U.S.C. § 158(d)(2).

<sup>3</sup> See, e.g., *In the Matter of Digital Broadband Application Corp.*, DA 03-1526 (May 7, 2003) (approving application in which applicant paid VSAT application fee for 1,000,000 transmit/receive remote terminals and one hub to be used for DBS service from Canadian satellites). In an abundance of caution, DIRECTV has submitted an amount equal to the VSAT application fee with its blanket earth station license application.

States. These small receive-only satellite dishes generally require no separate filing fee to license or deploy because DBS is a mass-market consumer service for which the Commission has no licensing requirement. Nonetheless, because the instant application seeks access to the United States from a Canadian orbital position, the Commission may require that the downlink receive-only antennas be subject to blanket licensing as a matter of public policy. If this were the case, under a literal reading of the Commission's Fee Filing Guide, a fee of \$325 for each receive-only earth station or a total filing fee of \$325,000,000 could be required for the processing of this single application. Such a fee would plainly pose a prohibitive economic burden on DIRECTV's ability to proceed in expanding its local-into-local service as described in the attached application.

As mentioned, requiring a filing fee in this case would be inconsistent with the Commission's treatment of identical receive-only antennas in the U.S. DBS service. Moreover, in its recent *Space Station Licensing Order*, the Commission concluded that there is no need for a satellite operator to seek separate authorization for routinely-licensed receive-only earth station antennas -- or to pay a separate fee -- if the Commission has concluded that the public interest is served by that provider's being added to the Permitted Space Station List, including providers authorized to provide direct-to-home ("DTH") services.<sup>4</sup> Although this regime applies only to Fixed-Service Satellites and does not apply to DBS service, the underlying policy supports the same outcome in this instance. As with a Permitted Space Station request, DIRECTV has submitted for the Commission's consideration the requisite analysis necessary for the Commission to determine whether it is in the public interest for DIRECTV to provide service to

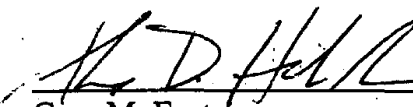
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<sup>4</sup> See *Second Report and Order in IB Docket No. 02-34*, *Second Report and Order in IB Docket No. 00-248*, and *Declaratory Order in IB Docket No. 96-111* (rel. June 20, 2003), at ¶¶ 21-23.

the United States from a Canadian orbital position. If the Commission concludes that this is so, there is no reason for DIRECTV to pay prohibitive fees to cover separate licensing for its customers' small-dish antennas. The result would be overtly discriminatory treatment relative to other DBS and DTH providers serving the United States.

Therefore, DIRECTV respectfully requests, for good cause shown, that the Commission waive its general fee of \$325 for each application for a receive-only earth station to the extent that this rule may apply. To the extent that the Commission finds that a fee is required, DIRECTV urges the Commission to find that the VSAT application fee is applicable as the most analogous filing fee.<sup>5</sup> For your convenience, enclosed is a copy of the application materials to which this request for waiver is associated. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Gary M. Epstein  
James H. Barker  
Alex D. Hoehn-Saric  
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Suite 1000  
Washington, D.C. 20004  
(202) 637-2200 (phone)  
(202) 637-2201 (fax).

Counsel for DIRECTV ENTERPRISES, LLC

January 12, 2004

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<sup>5</sup> DIRECTV submitted a \$7,935.00 filing fee with its blanket DBS earth station license application. Based on the Commission's determination with respect to this waiver request, DIRECTV may seek a refund of the filing fee.

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589  
Page 1 of 1

(1) LOCKBOX # 358160			
<b>SECTION A - PAYER INFORMATION</b>			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>DIRECTV Enterprises, LLC</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$7,935.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>2230 East Imperial Hwy.</b>			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY <b>El Segundo</b>		(7) STATE <b>CA</b>	(8) ZIP CODE <b>90245</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>310 - 5355000</b>		(10) COUNTRY CODE (if not in U.S.A.) <b>US</b>	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(11) PAYER (FRN) <b>0004365367</b>			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME <b>DIRECTV Enterprises, LLC</b>			
(14) STREET ADDRESS LINE NO. 1 <b>2230 East Imperial Hwy.</b>			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY <b>El Segundo</b>		(17) STATE <b>CA</b>	(18) ZIP CODE <b>90245 -</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>310-535-5000</b>		(20) COUNTRY CODE (if not in U.S.A.) <b>US</b>	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>			
(21) APPLICANT (FRN) <b>0004365367</b>			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE <b>BGV</b>	(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$7,935.00</b>	(27A) TOTAL FEE <b>\$7,935.00</b>		
(28A) FCC CODE 1	(29A) FCC CODE 2 <b>IB2004000054</b>		
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1	(29B) FCC CODE 2		
<b>SECTION D - CERTIFICATION</b>			
CERTIFICATION STATEMENT I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE _____		DATE _____	
<b>SECTION E - CREDIT CARD PAYMENT INFORMATION</b>			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	



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**RAMIS ACCOUNT RECEIVABLES****Check Number Query Report**

Page 1 of 1

Wednesday, February 18, 2004 03:49 PM

FEE Control Number : 0401218160117001

Customer FRN : 0004365367

FRN Name : DIRECTV Enterprises, LLC

Check Number : 321332000000

Receipt Amount : \$7,935.00

Date Received : 01/20/2004



AR012-A  
2/18/2004  
15:50:50

RAMIS ACCOUNTS RECEIVABLE - (C) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1  
2/18/2004  
15:50:50

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560890	1/21/04	0401218160117001	0004365367	DIRECTV Enterprises, LLC	1/20/04	\$7,935.00

Seq: 1 Call Sign: FCC Code 1: FCC Code 2: IB2004000054 Tin Number:  
PTC: BGV QTY: 1 Applied Amt: 7935.00  
Applicant Name: DIRECTV ENTERPRISES LLC  
Address: 2230 EAST IMPERIAL HWY

Total Applied: \$7,935.00 Total Receipt: \$7,935.00